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No. 05-669

IN THE

Supreme Court of the United States

BP AMERICA PRODUCTION COMPANY AND
ATLANTIC RICHFIELD COMPANY,
Petitioners,

v.

REJANE BURTON,
ACTING ASSISTANT SECRETARY OF THE INTERIOR
FOR LAND AND MINERALS MANAGEMENT, *et al.*,
Respondents.

On Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

The government in essence argues that the phrase "[e]very action" in Section 2415(a) does not really mean "every action." Rather, the government urges that the phrase includes *some* actions—adjudicative actions before a *court*—but excludes others—adjudicative actions before an *agency*. That argument contravenes not only the statute's "patently broad" text, *OXY USA, Inc.* v. *Babbitt*, 268 F.3d 1001, 1005 (10th Cir. 2001) (*en banc*), but fundamental canons of construction as well. It renders an entire subsection of the statute—Section 2415(i)'s exception for administrative offsets—superfluous. It is at war with Section 2415's structure, and destroys Congress's careful calibration of record-retention and limitations periods.

More important, that construction would all but deprive Section 2415(a) of practical effect. In the government's view, Section 2415(a) limits the time to pursue claims in court in the first instance, but permits the very same claims to be pursued administratively in perpetuity *and* in court thereafter within one year of final administrative decision. That eliminates both the repose and the incentive for diligent prosecution that Section 2415(a) was supposed to provide. Courts should not "rewrite a statute in hopes of better achieving one of Congress's purposes." Gov't Br. 40-41. But nor should they disregard a textually proper construction in favor of one that is so crabbed that it not only subverts the statutory purpose, but also converts the statute into a virtually meaningless gesture.

The government's reliance on "strict construction" is misplaced. Even when strictly construing a limitations period, this Court must give effect to statutory text; avoid rendering provisions superfluous; and ensure that it does not undermine the statute's intended effect. Just like the construction this Court rejected in *Bowers* v. *New York & Albany Lighterage Co.*, 273 U.S. 346 (1927), the government's construction here would contravene each of those requirements.

A. The Terms "Action" And "Complaint" Encompass Administrative Adjudications

Section 2415(a)'s breadth is evident from its text: It applies to "every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract." 28 U.S.C. § 2415(a).

1. The government does not deny that, in modern usage, the word "action" is sufficiently broad to encompass both judicial and administrative actions for money, such as the one at issue here.[1] Nor does it dispute that dozens of statutes and regulations use the term "action" in precisely that fashion. Pet. Br. 19-23 & nn. 3-7; Gov't Br. 20. Nonetheless, the government asserts that the words "every action," when used by themselves, do not encompass administrative actions. Noting the many statutes and regulations that use phrases like "administrative or civil action," the government asserts that, when Congress "intends a phrase that includes the word 'action' to govern administrative proceedings, it says so expressly." Gov't Br. 20-21.

That position is unfounded. Congress and agencies often use the word "action" by itself to encompass administrative and judicial actions alike; context then *proves* that the word "action" is used in that sense. For example, the FDCA authorizes an "[a]ction by the Secretary" for money penalties before the agency and, in the alternative, an "[a]ction by the Attorney General" in court. 21 U.S.C. § 335b(b)(1)(A), (B). It then limits *both* by declaring that "*[n]o action* may be initiated under this section" more than 6 years after the facts become known to the government or 10 years after the events take place. *Id.* § 335b(b)(3) (emphasis added); see also 31 C.F.R. § 501.703(b) (declaring that agency rules for adjudication must be construed to promote "just, speedy, and inexpensive determination of every action"). The MMS itself, in formal orders, often uses the word "action" without

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[1] The government declines to contest in this Court that the instant action is "for money damages" and is "founded upon [a] contract." See Pet. Br. 45-50; Gov't Br. 41 n. 14; contrast Br. in Opp. 18-19.

elaboration to encompass adversary administrative actions, including the action to recover royalties at issue here. See Pet. Br. 21 & n.8; Gov't Br. 21 n.4. That ordinary usage by the relevant agency is surely probative of ordinary meaning. The government's argument, moreover, is based on heads-I-win, tails-you-lose illogic.[2] It is also backwards: Where Congress wishes to *exclude* administrative actions, it does so expressly, using modifiers unique to the judicial process. Pet. Br. 24-25 & nn.12-14 (citing examples). The absence of such limiting language here speaks volumes.

Besides, the fact that the word "action" is regularly used to encompass administrative proceedings—even in phrases such as "civil or administrative action" or "action or proceeding before a[n] * * * administrative agency," Pet. Br. 19-21 & nn.3-7—makes clear that "administrative actions" are a subset of the more general category "actions." If, as the government posits, the term "action" excluded administrative actions, putting the word "administrative" in front of "action" could not expand its scope. Here, moreover, Congress did not need the word "administrative" to make Section 2415's all-encompassing scope clear. Congress declared that Section 2415(a) applies to "*every* action." It is nonsensical to argue that, because Congress and regulators identify "administrative actions" as a subset of "actions" in many contexts, administrative actions are not encompassed within the phrase "*every* action" in Section 2415(a).[3]

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[2] The government demands proof that Congress and agencies use the word "action" to encompass administrative actions. But, when confronted with myriad statutes and regulations that do precisely that, see Pet. Br. 18-21, the government rejects them because context, definitions, or modifiers make it *clear* that Congress used "actions" to encompass administrative actions. If we cited statutes or regulations lacking those features, the government would of course dismiss those as ambiguous.

[3] The government also argues that Section 2415 should be limited to judicial proceedings because "Section 2415 is located within Title 28" of the U.S. Code, "which is entitled 'Judiciary and Judicial Procedure'—not 'Administrative Procedure.'" Gov't Br. 24. But Section 2415 belongs in Title 28 because it governs *both* judicial and administrative actions. Title

2. The government likewise errs in asserting (Br. 16) that the word "complaint" forecloses Section 2415(a)'s application to actions before agencies. The government does not dispute that such actions are often initiated by "complaint." Gov't Br. 21. Instead, it argues that Congress meant to exclude administrative actions because agency "procedures vary substantially," with some employing "different terminology tailored to specific contexts." *Ibid.* But that is backwards: Congress used the broad, generic term "complaint" in Section 2415(a) to refer to any document that *commences* proceedings by "stat[ing] * * * the basis for the plaintiff's claim, and the demand for relief." *Black's Law Dictionary* 303 (8th ed. 2004). As one regulation explains, "[c]omplaint means any document initiating an adjudicatory proceeding, whether designated a complaint * * * or otherwise." 17 C.F.R. § 10.2(f). The government concedes that the term "complaint" includes not only instruments bearing that formal label but also any "functionally similar document." Gov't Br. 21. Not all adjudications begin with a document labeled "complaint." But they all begin with a document that is "functionally similar."

No less than agencies, courts use a variety of terms for what is often referred to as a complaint. In Oklahoma, it is denominated a "petition"; at common law, it was called a "declaration." See Pet. Br. 24 n.11. Yet no one would argue that a federal limitations period regulating when a "complaint" asserting a federal claim must be filed is without effect in Oklahoma courts simply because proceedings in those courts are commenced by "petition." *Ibid.* Likewise here, the fact that some administrative agencies use "different terminology" for the complaint—referring to the submission of a "claim," for example, Gov't Br. 22 (quoting 41

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28 includes other provisions applicable to both judicial and administrative procedure. For example, the Federal Tort Claims Act, codified in Title 28, sets forth procedures for the "[a]dministrative adjustment of claims" against the United States. See 28 U.S.C. § 2672.

U.S.C. § 602 and 42 U.S.C. § 9612(d))—cannot mean that Section 2415(a) lacks application to agency actions.

For the same reasons, the government errs in asserting that, "even if some administrative pleadings were governed by the limitations period, MMS's orders would not be," because "[t]here is no 'complaint' in [MMS's] scheme." Gov't Br. 22, 24. The government argues that the MMS order to pay that began these proceedings does not function as a complaint because "[a] complaint seeks relief," while "an order imposes it." *Id.* at 23. But an MMS order to pay does not fall within the traditional understanding of administrative orders, which are "issued by a government agency *after* an adjudicatory hearing." *Black's Law Dictionary*, *supra*, at 1130 (emphasis added). In MMS practice, the order to pay *precedes* the adjudication, which takes place during the so-called "appeal" under 30 C.F.R. § 290.100, *et seq.* As the Assistant Secretary's sweeping opinion in this case demonstrates, the "appeal" that follows an MMS order to pay is in fact a plenary proceeding to resolve the merits *in the first instance*. See Pet. App. 68a-97a. Both factual and legal issues are adjudicated during the "appeal"; its scope is not constrained by limitations characteristic of appellate review.[4] Thus, while an MMS order may purport to "*command* the payment of royalties," Gov't Br. 23, it (like a complaint) initiates, rather than resolves, MMS's claim.

The contrary position is difficult to reconcile with the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 ("FOGRSFA"), which established a statute of limitations for oil and gas (but not other minerals) extracted from federal (but not Indian) lands after September 1, 1996. That provision declares that any "judicial proceeding or demand which arises from * * * [a lease] obligation shall be *commenced* within seven years" of when "the obligation

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[4] The government points out that an "informal process" often precedes the issuance of the order. There are no guidelines or regulations governing that process, however, and lessees are not afforded anything resembling an adjudicatory hearing to present a full defense.

becomes due." 30 U.S.C. § 1724(b) (emphasis added). It defines "demand" to include "an order to pay issued by the Secretary" where there is "a reasonable basis to conclude that the obligation in the amount of the demand is due and owing." 30 U.S.C. § 1702(23)(A). FOGRSFA thus recognizes that a so-called MMS "order to pay," far from concluding the action, in fact "*commence[s]*" it. *Id.* § 1724(b). The definition confirms that such orders are not merits dispositions but preliminary "demands" issued if there is a "reasonable basis" (probable cause) to conclude money is owed. *Id.* § 1702(23)(A). Whether money is in fact owed is left for later adjudication. Congress's use of the word "demand" is also telling, since a complaint is a type of "demand." See *Black's Law Dictionary*, *supra*, at 303.

The government's argument also yields absurd results. Under it, an agency can *opt out* of a statutory limitations period by renaming the document that initiates its adjudications. The Mineral Leasing Act does not require that the Department of Interior proceed by "order" or "complaint." Yet, by historical accident, the agency sometimes uses one label and sometimes another. In *Andrus* v. *Shell Oil Co.*, 446 U.S. 657 (1980), for example, the Bureau of Land Management sought to cancel several mineral patents by "issu[ing] administrative *complaints*." *Id.* at 660 (emphasis added). Under the government's theory, the agency could avoid Section 2415's limitations period by renaming all administrative complaints "orders." As noted above (at pp. 4-5, *supra*), the government cannot evade federal limitations periods by filing its lawsuit in a jurisdiction where proceedings are initiated by "petition" or "declaration" rather than "complaint." Likewise, federal agencies cannot avoid the limitations period in Section 2415(a) by choosing to commence proceedings not with a complaint but with an order.

3. This Court's opinions confirm what ordinary usage suggests—that "action" and "complaint" are sufficiently broad to encompass administrative actions like the action for royalties at issue here. Pet. Br. 17-19. Despite the gov-

ernment's protestations, *Pennsylvania* v. *Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546 (1986), and *West* v. *Gibson*, 527 U.S. 212 (1999), did indeed "construe[] the term 'action' to encompass administrative actions." Gov't Br. 18 (quoting Pet. Br. 17). As this Court later stated, "[i]n *Delaware Valley*, we rejected the contention that the word 'action' * * * should be read narrowly to exclude all proceedings which could be plausibly characterized as 'non-judicial.'" *Sullivan* v. *Hudson*, 490 U.S. 877, 888 (1989).

The government's contrary construction rests largely on the entries for "action" and "complaint" in *Black's Law Dictionary*. See Gov't Br. 9, 14, 15, 16, 17, 23. But this Court is "not bound to accept *Black's* * * * as the authoritative expositor of American Law." *Pioneer Inv. Servs.* v. *Brunswick Assocs.*, 507 U.S. 380, 403 (1993) (O'Connor, J., dissenting). That is particularly true where, as here, the definition does not correspond to current, prevailing usage reflected in court opinions, statutes, regulations, and agency decisions. The cited definition of "action" dates at least to the 1910 second edition (p. 25)—before administrative agencies became commonplace, and well before the APA regularized the trial of adversary actions before them. But the trial of actions before agencies is now common, and *Black's* failure to update an entry cannot turn back the clock.

The government's reliance on *Unexcelled Chemical Corp.* v. *United States*, 345 U.S. 59 (1953), is likewise misplaced. That decision does not "h[o]ld * * * that commencing an 'action' by filing a 'complaint' refers, in its 'ordinary sense,' to filing a complaint in court, not to initiating an administrative proceeding." Gov't Br. 17. The primary question in *Unexcelled* was whether the two-year limitations period in the Portal-to-Portal Act, 29 U.S.C. § 255, applied to a *judicial action* for liquidated damages. The Court held that it did. 345 U.S. at 63-64.

In a single paragraph, *Unexcelled* responded to the government's alternative argument that its suit was filed within the two-year limit. The Portal-to-Portal Act provides that

"'an action is *commenced* for the purposes of [the statute] * * * on the date when the complaint is filed.'" 345 U.S. at 66 (quoting 29 U.S.C. § 256) (emphasis added). The government argued that its suit, although filed after the two-year period, was timely because the action was "commenced" three years earlier, with the Secretary of Labor's "issuance of a formal complaint in the [separate] administrative proceedings." *Ibid.* The Court rejected that argument, stating that "[c]ommencement of an action by the filing of a complaint has too familiar a history and the purpose of §§ 6 and 7 was too obvious for us to assume that Congress did not mean to use the words in their ordinary sense." *Ibid.*

Properly understood, that does not mean that administrative actions were exempt from the statute of limitations. That was not at issue, since the administrative proceedings *were* brought within the two-year period.[5] The question was whether the timely filing of the administrative complaint could be said to "commence" the later, distinct judicial action so as to make it timely. (Unlike Section 2415(a), the Portal-to-Portal Act lacked a relevant provision to toll the limitations period during administrative proceedings.) Invoking the purpose of the provisions at issue, this Court answered that question in the negative, consistent with the "familiar * * * history" that an action is "commenced" when the complaint in *that proceeding* is filed, not when a complaint in some earlier, separate proceeding is filed. 345 U.S. at 66. *Each* action subject to a statute of limitations—administrative or judicial—must be filed within the speci-

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[5] The text of the Portal-to-Portal Act, moreover, made it clear that it was limited to judicial proceedings. The section at issue in *Unexcelled* specifically refers to "the *court* in which the action is brought" and "the *court* in which the action was commenced." Portal-to-Portal Act of 1947, § 7, 61 Stat. 88, currently codified at 29 U.S.C. § 256 (emphasis added). Similarly, the provision of the Walsh-Healy Act at issue allowed liquidated damages in "*suits* brought in the name of the Attorney General." *Unexcelled*, 345 U.S. at 65-66 n.4 (emphasis added). In contrast, Section 2415(a) applies to "every action," and contains no references to "court" or "suit" that might limit its scope. See p. 2, *supra*; Pet. Br. 24-26.

fied period. The *administrative* complaint thus may have "commenced" the *administrative* action. But it could not be said to have commenced the *separate judicial action* so as to make it timely. For that, a complaint had to be filed in court within the limitations period. *Ibid.* That unexceptional ruling sheds no light on the issue before this Court.

B. The Government's Construction Renders An Entire Subsection Of Section 2415 Superfluous

To the extent Section 2415(a)'s scope is in doubt, the remainder of the statute erases any question. It is a "'cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW Inc.* v. *Andrews*, 534 U.S. 19, 31 (2001) (quoting *Duncan* v. *Walker*, 533 U.S. 167, 174 (2001)). In this case, Subsection (i) of Section 2415 expressly exempts "administrative offsets" from the limitations period that Section 2415(a) otherwise establishes. That exception for administrative offsets would be entirely unnecessary if the limitations period did not apply to administrative proceedings in the first place. Pet. Br. 26-30. Court after court, including the D.C. Circuit, has acknowledged as much. Pet. App. 18a; *OXY*, 268 F.3d at 1006; *United States* v. *Hanover Ins. Co.*, 82 F.3d 1052, 1055 (Fed. Cir. 1996).

To evade that "cardinal principle," the government invokes legislative history, urging that Congress added Subsection (i) merely "to 'clarify[]' that the limitations period does not apply to administrative offsets." Gov't Br. 31. Even if isolated references to "clarification" in a Senate Report, Gov't Br. 31 (quoting Sen. Rep. No. 378, 97th Cong., 2d Sess. 2, 16 (1982)), could trump the rule against superfluity—and they cannot—the Senate Report's substance is to the contrary. The Report begins by observing that "[Subsection (i)] *allows* collection of delinquent debt owed the government by administrative offset beyond the six-year statute of limitations." Sen. Rep. No. 378, *supra*, at 16 (emphasis added). It explains that "[t]he Justice Depart-

ment has determined that *the six-year statute of limitations prevents the government from collecting debts by means of offset*, thus, the government will be unable to collect a just debt from many debtors *because the statute of limitations has run out*." *Ibid.* (emphasis added); see *id.* at 16-17 (noting the need to amend because, under the then-existing version of Section 2415, "if more than six years passes * * *, the government will be unable to set off the employee's retirement pay"). Finally, it summarized that "[t]his *revision* to Section 2415 *would allow* administrative offset of delinquent debts owed the government * * * beyond the six-year statute of limitations." *Id.* at 17 (emphasis added). That such a "revision" was thought necessary to "allow" the pursuit of administrative offsets "beyond the six-year statute of limitations," *id.* at 16-17, shows that Subsection (i) had the substantive effect of affirmatively excepting administrative offsets from an otherwise applicable limitations period.

The government also urges that excluding administrative actions from Section 2415(a) would not convert the administrative-offset exception into surplusage:

> If the debt * * * could otherwise be enforced only through an affirmative action in court, and an action in court on that debt would be barred by Section 2415(a), Section 2415(i) clarifies that such an offset is not time-barred. The question whether an otherwise time-barred claim can be used defensively as an offset in that manner arises whether or not Section 2415(a) limits only court actions or both court actions and administrative proceedings brought by the government.

Gov't Br. 32. That argument, to the extent it makes sense, contradicts the government's observation that "a statute of limitations extinguishes only the remedy, not the underlying right." Gov't Br. 13 (citing *Beach* v. *Ocwen Fed. Bank*, 523 U.S. 410, 416-417 (1998)). If Section 2415(a) barred *only* actions *in court*, it would be perfectly clear that agen-

cies could pursue otherwise barred claims by *administrative* offset even absent Section 2415(i)'s exception.[6]

The government likewise errs when it dismisses Section 2415(i)'s relevance by urging that "'[t]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.'" Gov't Br. 30 (quoting *Mackey* v. *Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 840 (1988)). To the contrary, even where a provision is added by amendment, this Court interprets the resulting statute as if it had read that way from the outset. *United States* v. *LaFranca*, 282 U.S. 568, 576 (1931); Pet. Br. 30 (citing additional authority). It thus is not our view that Subsection (i) "expand[ed] the statute's coverage to other administrative proceedings." Gov't Br. 30; see also *id.* at 11, 33. It is that, regardless of how one might read Section 2415(a) in isolation, the statute as a whole—including Subsection (i)—makes it clear that Section 2415(a) extends to administrative actions except where, as in Section 2415(i) itself, Congress provides otherwise.

C. Excluding Administrative Proceedings From Section 2415(a) Renders Its Effects Illusory

The government, moreover, largely ignores one of the most fundamental defects in its construction—that it deprives Section 2415(a) of practical effect.

1. The government urges that, even if judicial actions founded on contract are barred by the limitations period, it may pursue precisely the same claims administratively in perpetuity. But that converts Section 2415(a) into a meaningless gesture. Section 2415's primary purpose is to provide the repose Congress thought "required by modern standards of fairness and equity." Sen. Rep. No. 1328, 89th Cong., 2d Sess. 2 (1966); see Pet. Br. 35-37. Under the

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[6] Indeed, once the government took such an administrative offset, the claimant could sue for any money withheld as a result. The government then could assert its claim as an offset *in that judicial action* without regard to the limitations period. See 28 U.S.C. § 2415(e). The government's construction thus makes Section 2415(i) doubly superfluous.

government's theory, however, Section 2415(a) would protect against actions in court after six years, but leave individuals exposed to the same liabilities for the same claims before the agency in perpetuity. That is no repose at all. Worse still, the individual could also be liable for decades of interest, based on a disputable "clarification." See Pet. Br. 38-40. As the Office of Legal Counsel observed when interpreting Section 2415(a), "if the United States could administratively collect time-barred debts where no claim was filed against it, this would result in a completely ineffective statute of limitations" and "the repose intended by § 2415 would be illusory." *Effect of Statute of Limitations on Administrative Collection of United States Claims*, Mem. Op. Off. of Legal Counsel 7-8 (Sept. 29, 1978).

Far from denying that result, the government embraces it—and urges that it can bring judicial actions in perpetuity as well. According to the government, "administrative proceedings * * * *trigger* the limitations period; they are not 'actions' governed by it." Gov't Br. 15 (emphasis added). The government thus does not merely claim that it can collect contract damages at any point in the future through an administrative action. It also claims that it can wait until the limitations period expires, file an administrative action, and *then* file a judicial action one year after the administrative action terminates. The government thus argues that, despite the six-year limitations period, it has forever to bring administrative actions, and forever plus a year to file in court. "It is an elementary rule of construction that 'the act cannot be held to destroy itself.'" *Citizens Bank of Md.* v. *Strumpf*, 516 U.S. 16, 20 (1995) (quoting *Tex. & Pac. Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U.S. 426, 446 (1907)). Yet that is precisely the effect of the government's construction.

2. The government's construction also destroys the other "salutary effect[s]" Congress intended Section 2415(a) to have. Pet. Br. 4 (quoting Sen. Rep. No. 1328, *supra*, at 2). A statute of limitations increases governmental efficiency by forcing agencies to pursue claims "at a

sufficiently early time so that necessary witnesses, documents, and other evidence are still available * * * ." Sen. Rep. No. 1328, *supra*, at 12. It avoids "judicial hostility to old claims" and "minimizes * * * collection problems arising with respect to debtors who have died, disappeared, or gone bankrupt." *Ibid.* If agencies know they can recover administratively indefinitely—with interest—any incentive for prompt prosecution is lost. Thus, while *amici* stress that Indian Tribes "rely on MMS to perform its royalty enforcement duty consistent with the United States' trust responsibility," Br. *Amici* Jicarilla Apache Nation, *et al.* 26-27 ("Jicarilla Br."), Congress determined that the government performs that duty best when confronted with the discipline provided by an enforceable limitations period.

Implicitly acknowledging that its construction defeats Section 2415(a)'s purposes, the government asserts that appeals to "general policies of fairness and repose" cannot overcome statutory text. Gov't Br. 35 (quoting Pet. App. 20a). But the issue is not policy. It is statutory meaning. The government asks this Court to reject a proper textual construction adopted by two courts of appeals in favor of one that defeats every single one of Congress's stated purposes in enacting the statute. The rules of construction will not tolerate that result. See *Griffin* v. *Oceanic Contrs. Inc.*, 458 U.S. 564, 575 (1982) ("absurd results are to be avoided" where "alternative interpretations consistent with the legislative purpose are available"); *Neder* v. *United States*, 527 U.S. 1, 15 (1999) (Court is "entitled to stand back and see" the practical impact of its decisions).

For related reasons, the government's claim that "[p]etitioners mostly avoid Section 2415(a)'s legislative history," Gov't Br. 29, is misdirected. That history—which carefully documents each purpose underlying Section 2415(a)—is discussed in detail in our opening brief. Pet. Br. 3-4, 35-38. And, as we explained, the government's construction is at

war with each purpose identified in the legislative history. *Id.* at 35-38. On that issue, little more need be said.[7]

3. The government's construction, moreover, wreaks havoc with Section 2415's structure. Throughout Section 2415, Congress established stricter limits for the offensive assertion of government claims (claims to extract money from others) than for their defensive assertion (to avoid paying money) by an offset or otherwise. Pet. Br. 31-32. The government's construction, however, would set that careful structure on its head. Under it, offensive judicial actions to extract money would be subject to a six-year limitations period, 28 U.S.C. § 2415(a); administrative offsets to withhold money otherwise payable would be subject to a longer 10-year statute of limitations, 31 U.S.C. § 3716(e)(1) (expressly referenced in 28 U.S.C. § 2415(i)); but offensive administrative actions to extract money would be subject to no limitations period whatsoever. See Pet. Br. 31-32. The government never explains why Congress would have adopted that irrational structure.[8]

The government's construction also destroys the congruence that Congress, on two separate occasions, established between the limitations period and the record-retention period for oil and gas lessees. See Pet. Br. 32-33. The gov-

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[7] Rather than examine the legislative history, the government cherry-picks references to "suits" or "civil actions." Gov't Br. 27-29. Those references prove that Congress understood Section 2415(a) to cover judicial actions, but they do not prove that Congress meant to exclude administrative actions; nor does anything else. In any event, to the extent legislative history is relevant, it must give courts an understanding of the problem Congress confronted and the legislation's purposes. The government's position cannot be reconciled with either.

[8] The government hypothesizes that "affirmative administrative actions" sometimes "*may* be limited by context-specific limitations periods." Gov't Br. 33 n.9 (emphasis added). But Section 2415(a) was designed as a catch-all for situations in which Congress has not enacted context-specific limitations periods—it applies "*except* as otherwise provided." 28 U.S.C. § 2415(a) (emphasis added). The government never explains why that structure is rational in a catch-all either.

ernment does not dispute that its construction has that effect. Instead, it dismisses the notion that lessees will feel bound to retain pre-1996 records in perpetuity, asserting that "the lawful destruction of records would make the issuance of an order to pay unlikely." Gov't Br. 40. That attempted reassurance provides little comfort where, as here, liability can run into the tens or hundreds of millions of dollars; where, as here, the government claims the ability to detect underpayments well into the past; and where, as here, older claims are *more* valuable to the government because it can collect decades of interest. Pet. Br. 38-40.[9] The government's effort at reassurance, in any event, is hardly license to adopt a construction that destroys the coherence and symmetry of the statutory scheme—including the matching of record retention obligations and limitations periods—that Congress intended.

Finally, the government's construction destroys the symmetry Section 2415 sought to establish between the government and private litigants. Section 2415 is "a statute aimed at equalizing the litigative opportunities between the Government and private parties." *Crown Coat Front Co.* v. *United States*, 386 U.S. 503, 521 (1967). Yet the government would construe Section 2415(a) to give private entities six years to bring their claims, 28 U.S.C. § 2401; 41 U.S.C. § 605(a), while giving the government forever to bring its claims administratively. The government argues that symmetry "has little application to administrative proceedings that only the agency can initiate, and in which the agency is charged with interpreting then-governing statutes and regulations." Gov't Br. 36. That might be true for genuine "regulatory" proceedings, such as rulemakings or discipli-

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[9] MMS retains certain reports on royalties "indefinitely," Jicarilla Br. 14 n.9, and the government itself asserts that "audits can detect systematic underpayment dating back more than six years," Gov't Br. 37. Of course, what the government calls a "systemic underpayment" may merely result from MMS's after-the-fact "clarification" of how it interprets its rules. See Pet. Br. 39-40.

nary proceedings. But Section 2415 addresses "action[s] for money damages * * * founded upon * * * contract." 28 U.S.C. § 2415(a). When the government pursues an action for money damages, its claims "are almost indistinguishable from claims made by private litigants." Sen. Rep. No. 1328, *supra*, at 2. Yet the government would destroy the symmetry between private parties and the government that Congress sought to establish.

D. The Canon Of "Strict Construction" Does Not Counsel A Contrary Result

Ultimately, the government concedes that "the statutory terms 'action' and 'complaint' are sometimes used to refer to administrative proceedings." Gov't Br. 18. It urges, however, that "the canon requiring strict construction of limitations periods against the government counsels against giving those terms a broader reading here." *Ibid.* But "strict construction" does not require this Court to ignore the inherent breadth of a statutory term:

> "The rule of strict construction is not violated by permitting the words of the statute to have their full meaning, or the more extended of two meanings * * *; but the words should be taken in such a sense, bent neither one way nor the other, as will best manifest the legislative intent."

SEC v. *C.M. Joiner Leasing Corp.*, 320 U.S. 344, 355 (1943) (quoting *United States* v. *Hartwell*, 73 U.S. (6 Wall.) 385, 396 (1867)). "[S]trict construction" simply means that the scope of a statute cannot be "enlarged * * * beyond what the language requires." *United States* v. *Nordic Village, Inc.*, 503 U.S. 30, 34 (1992).

This Court has for that reason rejected strict construction arguments in circumstances nearly indistinguishable from those here. In *Bowers* v. *New York & Albany Lighterage Co.*, 273 U.S. 346 (1927), the Court addressed whether a statute of limitations barring the United States from initiating a "suit or proceeding for the collection of * * * taxes" after five years applied to the government's use of the

administrative procedure of "distraint." *Id.* at 348 & n.1. The government argued that the statute of limitations did not apply to distraint because "the word 'proceeding' refers only to a proceeding in court." *Id.* at 349. The government also asserted that, under the canon of "strict construction," "any ambiguity in the clause under consideration must be resolved in [its] favor." *Ibid.*

The Court agreed that it was required to apply a strict construction, but rejected the government's reading. The Court observed that the language at issue was sufficiently broad "and commonly used to comprehend steps taken in" both "judicial proceeding[s]" and "executive proceeding[s]." 273 U.S. at 349. The Court further noted that the government's reading of the statute was "inconsistent" with statutory text because it would render another provision of the statute superfluous. *Id.* at 351. And finally, the Court noted that, even in the context of "strict construction," it was required to examine "the terms and purpose of the statute":

> The purpose of the enactment was to fix a time beyond which * * * collection might not be initiated. The repose intended would not be attained if suits only were barred, leaving the collector free at any time to proceed by distraint. * * * The mischiefs to be remedied by setting a time limit against distraint are the same as those eliminated by bar against suit.

Id. at 349. Accordingly, the Court held that "the meaning of 'proceeding' * * * cannot be restricted to steps taken in a suit; it includes as well steps taken for collection of taxes by distraint." *Id.* at 352.

Each of the reasons the Court gave for rejecting the government's argument in *Bowers* applies with equal force here. Here, as in *Bowers*, the relevant terms are commonly used in reference to both administrative and judicial actions. Here, as in *Bowers*, the government's proposed construction would render a provision of the statute superfluous. And here, as in *Bowers*, excluding administrative proceedings from the scope of the statute of limitations

would completely undermine Congress's purpose in enacting the statute, which was to provide repose. Simply recognizing that the text and purpose of Section 2415 encompass administrative proceedings in addition to judicial proceedings does not violate the canon of "strict construction."

E. Amendments To The Mineral Leasing Act Do Not Support the Government's View

1. The government and its *amici* also argue that two amendments to the Mineral Leasing Act ("MLA")—FOGRMA in 1982 and FOGRSFA in 1996—"[d]emonstrate that Section 2415(a) [d]oes not [a]pply to MMS [o]rders to [p]ay [r]oyalties." Jicarilla Br. 11; Gov't Br. 36-39. They first assert that FOGRMA "was intended to provide [] more rigorous enforcement," Jicarilla Br. 12, and directed MMS to "audit and reconcile, to the extent practicable, all current and past leases of oil or gas and take appropriate actions." 30 U.S.C. § 1711(c)(1); Gov't Br. 36. They thus assert that FOGRMA "hardly manifests an intent to limit liability." Gov't Br. 36. But amendment of the MLA to provide more "rigorous enforcement" in 1982 provides no insight into the scope of a general statute of limitations enacted in 1966.

FOGRMA does not address Section 2415(a), or the limitations period for administrative actions for royalties.[10] Where the "later law[] * * * 'do[es] not seek to clarify an earlier enacted general term' and 'do[es] not depend for [its] effectiveness upon clarification * * * of an earlier statute,'" that later law is "'beside the point' in reading the first enactment." *Gutierrez* v. *Ada*, 528 U.S. 250, 257-258 (2000). The direction to the MMS to "audit and reconcile" accounts, moreover, is limited by the phrase "to the extent practicable." It hardly licenses MMS to bring stale actions that, because of a time bar, are clearly impracticable.

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[10] Both the government and *amici* note that FOGRMA established a limitations period for penalties, 30 U.S.C. § 1755, but not "orders directing a lessee to pay past-due royalties." Gov't Br. 37 n.11; see Jicarilla Br. 13. But that shows that Congress saw no need to address royalty payments, which were already covered by Section 2415(a).

The government's concerns about "rigorous enforcement" boil down to the complaint that six years is not enough time because it must conduct audits before commencing actions. Gov't Br. 38-39. That assertion, better addressed to Congress, is meritless. Six years is a generous period; when Congress enacted a prospective limitations period for certain MMS actions in FOGRSFA, it gave the government just one more year, for a total of seven. 30 U.S.C. § 1724(b)(1). That belies the government's current claim that "rigorous enforcement" requires it to have infinite time. Infinite time horizons are, in any event, the enemy of rigorous enforcement, because they give the government no reason to proceed with appropriate diligence.

2. The Jicarilla Tribe also argues that FOGRSFA's amendment to the Mineral Leasing Act to create a prospective limitations period for certain MMS orders "indicates that Congress in 1996 did not understand the general statute of limitations in Section 2415(a) to apply to MMS administrative orders." Jicarilla Br. 15; see p. 5-6, *supra*. That inference is unfounded. When Congress enacted that provision, the courts were divided on whether Section 2415(a) applied to administrative actions.[11] By acting prospectively, Congress at most declined to resolve that dispute.

Far from agreeing with the MMS and those courts that held Section 2415(a) to be inapplicable, Congress found "serious problems with the way" those "courts and consequently the MMS have interpreted the time within which collection of amounts due * * * can be undertaken." *Feder-*

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[11] Contrast *Hanover Ins. Co.*, 82 F.3d at 1055 ("Section 2415(a) applies to administrative actions"), and *Glenn Elec. Co.* v. *Donovan*, 755 F.2d 1028, 1031 (3d Cir. 1985) (observing that the district court's "well-reasoned opinion" had held that "the proper limitation period" for the administrative actions "was the general six-year period prescribed in 28 U.S.C. § 2415(a)"), with *Phillips Petroleum Co.* v. *Johnson*, No. 93-1377, 1994 WL 484506 (5th Cir. Sept. 7, 1994) (limitations period inapplicable to administrative action), and *Samedan Oil Corp.* v. *Deer*, No. Civ. A. 94-2123, 1995 WL 431307 (D.D.C. June 14, 1995) (same).

al Oil & Gas Royalty Simplification and Fairness Act of 1995: Report of the S. Comm. on Energy and Natural Res., 104th Cong., 2d Sess. 14 (1995). Cases like *Samedan* and *Phillips*, which "held no statute of limitations applies," Congress declared, "compel enactment" of a new limitations period. *Seven-Year Balanced Budget Reconciliation Act of 1995: Report of the House Comm. on the Budget*, 104th Cong., 1st Sess. 571 (1995). That Congress enacted a prospective limitations period for oil and gas leases to rectify the "serious problems" created by court and MMS decisions hardly suggests that Congress agreed with those decisions.

Congress's decision to act prospectively, moreover, is consistent with the expectation that this Court would eventually hold that Section 2415(a) does apply here. By acting prospectively, Congress avoided the constitutional issues that arise when a new, longer limitations period is enacted and made applicable to claims that, under the prior limitations period, were already barred. See, *e.g.*, *In re Enter. Mortgage Acceptance Co. Sec. Litig.*, 391 F. 3d 401, 410 (2d Cir. 2005) (holding that "the resurrection of previously time-barred claims" is "impermissibl[y] retroactive"). Besides, where there is no limitations period for past claims, Congress generally makes the new statute of limitations applicable to those claims too, while protecting claimholders by deeming such claims to have accrued on the day the new statute of limitations is enacted. That is precisely what Congress did when it enacted Section 2415(a). Pet. Br. 6, 44. That Congress did not do likewise in FOGRMA is evidence that such claims were already subject to a limitations period—not that Congress intended those claims (but not later-accruing claims) to persist in perpetuity.

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For the foregoing reasons and those set forth in petitioner's opening brief, the judgment of the D.C. Circuit should be reversed.

Respectfully submitted.

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